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10 *Attorneys for Trudy A. Nowak, Trustee*

11 **IN THE UNITED STATES BANKRUPTCY COURT**
12 **FOR THE DISTRICT OF ARIZONA**

13 In re:

(Chapter 7 Case)

14 MARTIN EDWARD HUSSAK,

No. 4:14-bk-09856-BMW

15 Debtor.

NOTICE OF TRUSTEE'S AMENDED
STIPULATED APPLICATION TO
COMPROMISE CLAIM [F.R.B.P. 9019]

16 TO: CREDITORS AND PARTIES-IN-INTEREST:

17 Notice is hereby given that Trudy A. Nowak, Chapter 7 Trustee ("**Trustee**"), has filed an Amended Stipulated Application to Compromise Claim ("**Stipulated Application**"), a complete copy of which is on file with the Clerk of the Court and available for inspection.

18 Prior to the petition date, Martin Edward Hussak ("**Debtor**") had a cause of action for attorney malpractice against his former counsel, Alan Solot, arising from his representation of Debtor in a prior bankruptcy case and the present case. In 2012, the Arizona Department of Transportation filed an eminent domain case in Pinal County Superior Court to take Debtor's property located in Picacho, Arizona. Debtor hired attorney Lawrence Schubart to represent him in that case. Mr. Solot filed Chapter 13 bankruptcy on behalf of Mr. Hussak on January 21, 2013 (the "**Original Chapter 13**"). Mr. Hussak alleges that Mr. Solot failed to get Mr. Schubart appointed as special counsel in the bankruptcy case in order to handle the pending eminent domain case, despite months of requests by Schubart.

23 Mr. Hussak alleges that Mr. Solot failed to represent him in a reasonable and prudent manner and failed to communicate with him sufficient care and diligence in the Original Chapter 13 bankruptcy case ultimately was dismissed on March 19, 2014 as a result of the failure to get a Plan of Reorganization timely approved. As a result of Mr. Solot's alleged failure to respond, alleged failure to get Mr. Schubart approved as special counsel, alleged failure to communicate and alleged failure to protect the Debtor's interests, Mr. Schubart withdrew in the eminent domain case in April 2014. As a result of Solot's alleged malpractice, Debtor was left without counsel and was allegedly unable to defend the eminent domain case and to protect the potential recovery sought therein.

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1 The current bankruptcy case was filed as a Chapter 13 on June 26, 2014. Mr. Hussak claims that
2 Mr. Solot's alleged negligence ultimately led to the State prevailing on an unopposed summary judgment
3 on July 17, 2014, depriving him of further compensation sought in the Pinal County eminent domain case.
Mr. Hussak was in prison at the time.

4 Alan Solot was disciplined by the State Bar of Arizona by Order dated October 15, 2015 (the
5 "**Order**"), as a result of a complaint filed by Mr. Hussak relating to the handling of his bankruptcy cases,
6 including but not limited to the alleged loss of the eminent domain case. The Order details the facts set
forth in the Stipulated Application that correspond to the directly related malpractice claim.

7 Without participation or knowledge of the Trustee, Mr. Hussak hired counsel and made a demand
8 to Mr. Solot on the claim for malpractice relating to the above-referenced conduct. The Trustee became
9 aware of the claim and of a tentative settlement between Mr. Hussak and Mr. Solot when the parties
requested that the Trustee acknowledge an alleged lack of interest in the claim on the part of the
bankruptcy estate.

10 Trustee entered into a tolling agreement with Mr. Solot relating to the malpractice claim in order to
11 investigate the ownership issue, and has determined that the claim is the asset of the Chapter 7 bankruptcy
12 estate. The parties wish to settle the claim.

13 Hussak has filed a one paragraph Complaint *pro per* in Pima County Superior Court, Case No.
14 C20163645, against Mr. Solot and "the Law Office of Alan Solot" alleging malpractice by Solot in 2013
in the bankruptcy matters and seeking unspecified damages. More recently, Hussak filed an Amended
Complaint.

15 The United States of America has filed a Proof of Claim in the amount of \$303,345.00, as a
16 secured creditor based upon a Judgment for restitution in a criminal case CR 11-01754-001-TUC-CKJ,
17 and the U.S. Customs & Border Protection has also filed a Proof of Claim in the amount of \$303,745.00 as
an unsecured creditor. *See* Proof of Claim Nos. 5 and 10.

18 Trustee has received an offer to settle all of the estate's interest in the malpractice claim with Mr.
19 Solot for a total of \$25,000.00 ("**Settlement Amount**"), including but not limited to any claims which
20 arose against Mr. Solot prior to the commencement of this case and any claims against Mr. Solot which
21 arose from the Original Chapter 13 case, subject to bankruptcy court approval, which Settlement Amount
22 is close to the same amount as the tentative settlement previously reached between Mr. Hussak and Mr.
23 Solot. Trustee believes the settlement is fair and is a prudent compromise, given the nature and amount of
the claim, the potential defenses, the complexity and difficulty of proving damages and causation, the
inability to pay a larger sum, and the posture involving Debtor's hostility and potential lack of
cooperation.

24 Additionally, in order to resolve the United States of America's claim that its lien attaches to the
25 proceeds from the settlement of the malpractice claim as set forth in the Stipulated Application, the United
State of America and the Trustee agree that the Settlement Amount, shall be distributed as follows:

- 26 a. First, payment in full of all administrative claims/expenses of the bankruptcy estate,
27 including but not limited to Trustee's fees and costs and Trustee's attorneys' fees and
28 costs;

- 1 b. Second, the payment of \$3,500.00 to the allowed non-administrative unsecured
2 creditor claims, excluding any unsecured claim of the United States of America¹; and
3 c. Third, the remaining balance of the Settlement Amount shall be distributed to the
4 United States of America.

5 Any person opposing same shall file a written objection, together with a notice of hearing, on or
6 before twenty-one (21) days of the date of this mailing as follows: United States Bankruptcy Court, as
7 follows: (a) mail or hand-delivery to 38 South Scott Avenue, Suite 100, Tucson, Arizona, 85701; or (b)
8 electronically at the Court's website: ecf.azb.uscourts.gov using the Court's electronic filing procedures,
9 with a copy to: Lane & Nach, P.C., 2001 E. Campbell Ave., Ste. 103, Phoenix, AZ 85016.

10 **Objections should be supported by specific facts.** If a party in interest timely objects in writing
11 and requests a hearing, the matter will be placed on the calendar to be heard by a United States
12 Bankruptcy Judge. If there is no timely written objection and request for hearing filed, no hearing will be
13 held and the Court will sign an Order without further notice to you.

14 DATED: January 18, 2018

15 **LANE & NACH, P.C.**

16 By: /s/ Adam B. Nach – 013622

17 Adam B. Nach

18 Paul M. Hilkert

19 Attorneys for Trustee

20 Copy of the foregoing delivered
21 via 1st Class Mail to the following on the
22 18th day of January, 2018:

23 Martin Edward Hussak
24 10313 S. Epperson Lane
25 Tucson, AZ 85756
26 Debtor

27 Denise Ann Faulk
28 Assistant United States Attorney
United States Attorney's Office
405 West Congress, Suite 4800
Tucson, AZ 85701-5040

¹ In the event that allowable non-administrative unsecured creditor claims total less than \$3,500.00, the non-administrative unsecured creditor claims shall be paid in full, with any funds remaining thereafter to be distributed to the United States of America.

1 Copy of the foregoing delivered
2 via electronic notification to the following
on the 18th day of January, 2018:

3 Janet Linton
4 Udall Law Firm, LLP
2 4801 E. Broadway Blvd., Suite 400
Tucson, Arizona 85711-3638
5 linton@udalllaw.com

6 By /s/ Debbie McKernan